

Information Blocking

ONC proposed rule
Comments due May 3, 2019

Section 4004 of the Cures Act authorizes the Secretary of Health and Human Services to identify reasonable and necessary activities that do not constitute information blocking. In consultation with stakeholders. If the actions of a regulated actor satisfy one or more exception, the actions would not be treated as information blocking and the actor would not be subject to civil penalties and other disincentives under the law.

Proposal: Describes exceptions to information blocking

- Preventing physical harm to the patient
- Promoting Privacy of EHI (i.e. HIPAA law)
- Promoting Security of EHI such as a security policy based on a risk assessment
- Recovering Costs Incurred (requester not paying)
- Licensing Interoperability Elements (requester not paying)
- Responding to requests that are infeasible or substantial burden
- Maintaining and Improving Health IT Performance (maintenance downtime)

Proposal: Describes Actors

- Providers
- Health Information Networks
- Health Information Exchanges
- Health IT Developers of Certified Health IT

Proposal: Describes how an actor can recover costs incurred in providing access exchange or use of electronic health information (EHI)

- Must be objective and verifiable
- Related to actual costs; not based on sales, profit, revenue or other value
- Reasonably allocated amount all customers